90-1415

No.

Supreme Court, U.S.
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IN THE SUPREME COURT
of the
UNITED STATES

October Term, 1990

PUGET SOUND POWER & LIGHT COMPANY,
Petitioner,

v.

BONNEVILLE POWER ADMINISTRATION;
JAMES J. JURA, as Administrator;
JAMES WATKINS, as Secretary of the Department of Energy
of the United States of America; and
the United States of America,
Respondents.

CROSS-PETITION OF PUGET SOUND POWER & LIGHT COMPANY FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

SHERILYN PETERSON
PERKINS COIE
One Bellevue Center, Suite 1800
411 - 108th Avenue N.E.
Bellevue, Washington 98004
(206) 453-6980

Counsel of Record for Cross-Petitioner
Puget Sound Power & Light Company

QUESTIONS PRESENTED

1. Whether a federal proprietary agency's interpretation of its governing statutes is entitled to the same deference afforded to an independent regulatory agency when the proprietary agency's interpretation (a) allows it to earn greater revenues than an alternative interpretation that is more consistent with the statutory language and (b) departs from its prior policy which was a contemporaneous interpretation of the statutes.

2. Whether the court of appeals erred in holding that the Bonneville Power Administration's ("BPA's") Long-Term Policy for allocating access to interregional power transmission lines, which withholds for BPA (without regard for BPA's actual needs) transmission capacity for short-term sales which could be used by others, is consistent with 16 U.S.C. §§ 837e, 838d and 839f(d) that require BPA to make available to non-federal utilities transmission capacity which is not required for the transmission of federal energy.

3. Whether the court of appeals erred in holding that BPA's policy, which forbids access to Puget Sound Power & Light Company for long-term sales on interregional power transmission lines, is not arbitrary and capricious, an abuse of discretion or in excess of BPA's statutory authority.

LIST OF PARTIES

Petitioners in the consolidated proceedings to review BPA's Long-Term Intertie Access Policy included California Energy Commission ("CEC"), California Public Utilities Commission ("CPUC"), Pacific Gas and Electric Company, Department of Water and Power of the City of Los Angeles, Public Service Department of the City of Burbank, Public Service Department of the City of Glendale, Water & Power Department of the City of Pasadena, Southern California Edison Company and San Diego Gas & Electric Company. All these petitioners are also petitioners seeking certiorari in Docket No. 90-1256, filed February 4, 1991.

Other petitioners and petitioner-intervenors included: Puget Sound Power & Light Company;[1] Washington Water Power Company, Pacific Northwest Generating Company and the Direct Service Industrial Customers (Vanalco, Inc., Aluminum Company of America, Columbia Falls Aluminum Company, Georgia-Pacific Corporation, Intalco Aluminum Corporation, Kaiser Aluminum & Chemical Corporation, Northwest Aluminum Company, Oregon Metallurgical Corporation, Pennwalt Corporation and Reynolds Metals Company).

Respondents in the proceedings below were Bonneville Power Administration, James J. Jura as Administrator of BPA; James Watkins as Secretary of the Department of Energy of the United States of America; and the United States of America. The following parties intervened as respondents in the proceedings below: Association of Public Agency Customers; Public Power Council; Public Utility District No. 1 of Chelan County, Washington; PacifiCorp, dba Pacific Power and Light Company; Public Utility District No. 2 of Grant County, Washington; Western Public Agencies Group; Montana Power Company; City of Seattle, City Light Department; Public Generating Pool; Eugene Water & Electric Board; Direct Service Industrial Customers; Portland General Electric Company; ARCO; Nongenerating Public Utilities; and Northwest Power Planning Council.

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[1] Puget Sound Power & Light Company has no parent company and no non-wholly owned subsidiaries. Puget's wholly owned subsidiary, Hydro Energy Development Corporation, has a non-wholly owned subsidiary named Hydro West Group, Inc.

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of the United States of America; and
the United States of America,
Respondents.

CROSS-PETITION OF
PUGET SOUND POWER & LIGHT COMPANY
FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Puget Sound Power & Light Company ("Puget") hereby cross-petitions for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals is reported at 909 F.2d 1298 (9th Cir. 1990). The opinions in two earlier related

cases are reported at *California Energy Resources Conservation & Development Comm'n. v. Bonneville Power Administration*, 831 F.2d 1467 (9th Cir. 1987), *cert. denied*, 488 U.S. 818 (1988), and *Department of Water & Power v. Bonneville Power Administration*, 759 F.2d 684 (9th Cir. 1985). These three cases are reproduced at Appendices A, B and C to the Petition for a Writ of Certiorari filed by the California Energy Commission, *et al.*, on February 4, 1991 (Docket No. 90-1256) (appendices hereafter referred to as "CEC App.").

JURISDICTION

The United States Court of Appeals for the Ninth Circuit entered its opinion and judgment on July 26, 1990. The court denied a petition for rehearing on October 5, 1990. CEC App. D. On December 21, 1990, Justice O'Connor entered an order extending the time for the California Energy Commission, *et al.*, to file their petition for certiorari to February 4, 1991. Puget received its copies of the petition submitted by California Energy Commission, *et al.*, on February 6, 1991, and, under Supreme Court Rule 12.3, Puget's cross-petition is due by March 8, 1991. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

PRINCIPAL STATUTES INVOLVED

Section 7 of the Act of August 31, 1964, 16 U.S.C. § 837e, provides, in pertinent part:

> Any capacity in Federal transmission lines [between the Pacific Northwest or Canada and other areas],...which is not required for the transmission of Federal energy [or Canadian Treaty energy], *shall be made available* as a carrier for transmission of other electric energy between such areas.

Emphasis added.

Section 6 of the Federal Columbia River Transmission System Act of 1974, 16 U.S.C. § 838d, provides in full:

> The Administrator shall make available to all utilities on a fair and nondiscriminatory basis, any capacity in the Federal transmission system which he determines to be in excess of the capacity required to transmit electric power generated or acquired by the United States.

Section 9 of the Pacific Northwest Electric Power Planning and Conservation Act of 1980, 16 U.S.C. § 839f (d) provides, in pertinent part, that subject to BPA's contractual obligations, other obligations under existing law, and available federal transmission capacity

> the Administrator shall provide transmission access, load factoring, storage and other services normally attendant thereto to such utilities....

STATEMENT OF THE CASE

The Bonneville Power Administration is a federal agency within the Department of Energy which markets electrical power from the Federal Columbia River power system and provides transmission services for federal and non-federal power.

1. The Intertie

At issue in this case is the Pacific Northwest-Pacific Southwest Intertie, which links the Pacific Northwest with the Pacific Southwest. The Intertie currently consists of three high-voltage transmission lines. BPA owns and operates most of the Intertie north of the Oregon-California and Oregon-Nevada borders. South of Oregon, the Intertie is owned by various California utilities. *See, generally, Department of Water & Power* v. *Bonneville Power Administration*, 759 F.2d 684, 686-87 (9th Cir. 1985), ("*LADWP*").

Congress intended the Intertie to enable power to be sold or exchanged between electric utilities in the two regions. Specifically, as the court recognized in *LADWP*:

> [t]he purpose of the Intertie...is to even out the peaks and troughs in the production and consumption of power between the Northwest and the Southwest. At certain times of year the Northwest produces more electricity than it can use and the Southwest experiences particularly heavy electricity consumption. At other times, the Northwest has heavy demand and the Southwest can produce surplus power. By allowing electricity to flow either north or south, each region can assist the other during times of heavy demand.

CEC App. C-3 (footnote omitted). Within the Pacific Northwest, these electric utilities include not just BPA, but also numerous other publicly-owned and investor-owned utilities such as Puget, which sell, purchase and exchange electric power in transactions with Pacific Southwest utilities. As recognized in *LADWP*, utilities other than BPA produce approximately half of the hydroelectric power sold in the Pacific Northwest. CEC App. C-4.

The Intertie is the only transmission link between the two regions capable of implementing such transactions. As recognized by BPA in its discussion preceding the draft Near Term Intertie Access Policy:

> Federal transmission facilities were constructed, *on the basis of general Pacific Northwest utility consensus*, in

> in order to avoid the costly facility duplication which would result if all utilities in the region were to construct their own facilities.

49 Fed. Reg. 30,346, 30, 349 (July 30, 1984) (emphasis added). BPA acknowledged in the Long Term Intertie Access proceedings that "commenters such as PSP&L [Puget] are correct in observing that the Intertie was envisioned as a resource available to non-federal utilities." CEC App. E-85. BPA's obligations regarding access to the Intertie should therefore be construed in light of this fundamental premise which has historically guided construction and use of the Intertie.

2. BPA's Intertie Access Policies

In September 1984, BPA adopted the first of a series of Intertie access policies, the "Near Term Intertie Access Policy" which was followed by a revised "Near Term" policy in June 1985 and a "Long Term" policy in May 1988. It is the "Long Term Intertie Access Policy" ("LTIAP") which is at issue here. The LTIAP allocates transmission capacity among BPA and other utilities for extraregional energy sales on (1) a short-term hourly basis ("Formula Allocation") and (2) a long-term basis ("Assured Delivery").

3. Formula Allocation

Section 5 of the LTIAP allocates access to the Intertie for short-term sales of energy based on three possible conditions. BPA calls this Formula Allocation. CEC App. E-24, E-35 through 39. Condition 1 applies where the federal hydroelectric system is in spill or "there is a likelihood of spill." CEC App. E-35. Under this condition, BPA and scheduling utilities are allocated capacity in proportion to the declared surplus of each. If, however, BPA is "unable" to sell its own entire allocation (perhaps because it has set its prices too high), BPA "will take larger allocations on ensuing days ..." regardless of whether BPA has consummated actual sales to fill such capacity. CEC App. E-36. The LTIAP thus increases the amount of Intertie capacity allocated to BPA--and hence withdrawn from Northwest utilities--totally without regard to transmission capability actually needed by BPA to transmit its own power sales.[2]

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[2] Similarly, the LTIAP states that under "Condition 2" (near spill) BPA may increase its share of Intertie capacity on ensuing days if its sales drop below 75 percent of its allocation. CEC App. E-36.

This restriction is a naked and illegal denial of transmission capability which violates the mandates of 16 U.S.C. § 837e, that capacity "not required for the transmission of Federal energy....shall be made available as a carrier for transmission" to non-federal utilities and 16 U.S.C. § 838d, that BPA "shall make available to all utilities on a fair and nondiscriminatory basis, any capacity in the Federal transmission system which he determines to be in excess of the capacity required to transmit electric power generated or acquired by the United States." *See also* 16 U.S.C. § 839f(d).

The Ninth Circuit recognized in *LADWP* [3] that:

> In allocating Intertie capacity among itself and other Northwest electricity producers, BPA is statutorily required to give itself preference. 16 U.S.C. § 837e. Any capacity in the Intertie "which is not required for the transmission of Federal energy....shall be made available as a carrier for transmission of other electric energy...." *Id.*

CEC App. C-5. The court further noted that "if the agency still has capacity remaining on the Intertie after it has sold available and foreseeable power," it is "required to make the Intertie available to other utilities." CEC App. C-17. The court reasoned:

> The Columbia River Act deals primarily with financing arrangements for BPA. The Act does, however, require BPA to make its facilities available to all utilities fairly once its own needs are satisfied:
>
> The Administrator shall make available to all utilities on a fair and nondiscriminatory basis, any capacity in the [Intertie] which he determines to be in excess of the capacity required to transmit electric power generated or acquired by the United States.
>
> 16 U.S.C. § 838d.

CEC App. C-17, C-18.

As noted by the Court in *LADWP*, the legislative history establishes that the BPA Administrator:

> *may not decline* to enter into [agreements to transmit other utilities' power] *merely because he may have energy available for sale to serve the same load.*

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[3] The Ninth Circuit exercises original jurisdiction to review final actions of BPA pursuant to 16 U.S.C. § 839f(e)(5). In *LADWP*, the court reviewed one aspect of the Near Term Policy not relevant here; that policy did not contain the Formula Allocation provisions later added in the LTIAP.

H.R. Rep. No. 590; 1964 U.S. Code Cong. & Ad. News at 3350.

CEC App. C-16 (emphasis added). Thus, Congress has clearly prohibited BPA from refusing to make Intertie capacity available merely because BPA may have "energy available for sale to serve the same load" without the actual prospect of a sale.

LTIAP's Formula Allocation provisions, which allow BPA to harbor Intertie capacity for itself regardless of its actual needs, violate its governing statutes and are wasteful. Indeed, since adoption of LTIAP, BPA has refused to make Intertie capacity available and has let it go unused even as water was spilled past Northwest dams.

The court below acknowledged BPA's duty to make capacity which it cannot use available for sales to others:

> In allocating limited transmission capacity, BPA must give itself priority. 16 U.S.C. § 837e. Nevertheless, it must transmit non-federal power to the extent that the Federal transmission lines have capacity not needed to transmit federal power. *Id.*

CEC App. A-5. The court also observed that "excess capacity is to be made available to non-federal utilities 'on a fair and nondiscriminatory basis,' 16 U.S.C. § 838d." CEC App. A-5, A-6. Yet, in upholding LTIAP's Formula Allocation provisions, the court never addressed the challenge described here (which was presented below); rather, the court focused largely on the California petitioners' allegations that Formula Allocation is anticompetitive. *See* CEC App. A-20 through 25.

BPA's statutory obligations to provide Intertie transmission service must be construed in light of the purposes for which the Intertie was authorized and built. As noted above, the Intertie is a resource constructed on the basis of regional consensus for use by all of the region's utilities on payment of an equitable portion of the cost of the Intertie. Failure by BPA to afford Intertie access on a fair and nondiscriminatory basis in inconsistent with this fundamental premise.

4. Assured Delivery

Section 4 of the LTIAP reserves 800 megawatts ("MW") of Intertie capacity for non-federal long-term transactions. CEC App.

E-29 through 33; E-43, E-44. Of this total, 444 MW are allocated among Pacific Northwest scheduling utilities in the amounts set forth in Exhibit B to the LTIAP. *Id.* at E-43.[4] Puget's allocation of the 444 MW is zero. *Id.*

BPA based the Exhibit B allocation scheme on one past projection (already out of date) of each utility's "average MW firm surplus" for a single year (July 1988 - June 1989), i.e., a forecast from March 1987. *Id.* Under LTIAP, that out-of-date snapshot becomes frozen forever in time since, according to BPA, "[a] utility's Exhibit B [allocation] as set in the Policy cannot increase." CEC App. E-71.

This is arbitrary and unlawful for several reasons. First, the allocation is based on the "average" surplus expected for that year and ignores the peaking or maximum capability of a utility's resources. A utility may, for example, have excess energy which cannot be stored at certain times of the year, but may not have an overall average annual surplus due to lesser energy availability at other times. BPA's own data shows that a utility's available "average firm surplus" varies depending upon whether a year is averaged or whether a smaller portion of a year is considered.[5]

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[4] The balance of the 800 MW is reserved for exchange transactions whereby Northwest utilities transmit power to Southwest utilities at certain times in exchange for a return transmission of energy by Southwest utilities at a future time. CEC App. E-33, E-44.

[5] For example, in the Near Term Intertie Access Policy, BPA's Exhibit B allocations were broken down by "Average [annual] firm surplus" and "Average firm surplus August through December." BPA's own "average surplus" varied between those two catagories by over 1000 MW and the averages of other utilities varied as well. *See* Appendix A hereto. Further, Puget has thermal resources which it historically has not used in the summer; however, over time, Puget may consider using such resources which would change its energy available for sale.

Second, the market and load/resource projections may change dramatically over time, but the allocations are fixed for an indefinite period.[6] Third, the allocation ignores utilities such as Puget which, because they have a resource deficit in the averaged data used by BPA, are allocated zero, even though they are the very utilities which, because of the deficit, need transmission to help meet their loads. (For example, an allocation to Puget could be used for seasonal exchanges which would help Puget meet its loads.) In short, LTIAP's zero Assured Delivery allocation to Puget (merely because the forecast for a single past year used by BPA showed no firm "average" annual energy surplus for Puget) fails to give any consideration to Puget's actual present or future needs. BPA's Assured Delivery limitations hinder or prevent desirable Intertie transactions.

The court below ignored this challenge to the LTIAP's Assured Delivery provisions. These issues were simply not addressed in the court's opinion though they were argued below.

5. Standard of Review

The Ninth Circuit's decision relied heavily upon the court's belief that it was bound to accord substantial deference to BPA's policy. *See, e.g.*, CEC App. A-12, A-13, A-17, A-18, A-28. The court stated that its standard of review was "deferential and presumes the agency action to be valid." CEC App. A-12. The court acknowledged the view of the District of Columbia Circuit in *National Fuel Gas Supply Corp. v. FERC*, 811 F.2d 1563, 1571 (D.C. Cir.), *cert. denied*, 484 U.S. 869 (1987), that "if the agency itself were an interested party...deference might lead a court to endorse self-serving views that an agency might offer...."

The Ninth Circuit in the proceeding below, however, disagreed with the District of Columbia Circuit on two inexplicable grounds.

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[6]In fact, BPA's LITAP Exhibit B designations of "average firm surplus" for some utilities has varied dramatically from that set forth in the Near Term Intertie Access Policy of November 1984. *Compare* CEC App. E-43 with Exhibit B from the 1984 policy (49 Fed. Reg. at 44,238) reproduced at Appendix A hereto. In 1984, seven utilities were allocated zero access as compared to three in 1988. Seattle City Light's 1984 zero allocation rose to 23 MW in 1988. Tacoma City Light's 1984 4 MW allocation rose to 41 in 1988. Exhibit B allocations for many of the other utilities also varied substantially even in those few years. These dramatic changes demonstrate that BPA's permanent allocation of Intertie capacity for long-term sales based on a single year's outdated forecast is unreasonable and arbitrary and capricious.

First, the court stated that "BPA did not draft the LTIAP to maximize its revenues," CEC App. A-13, a fact which has no relevance to whether BPA's interpretation of a statute, drafted for whatever purpose, is tainted by its significant financial self-interest. Second, while rejecting the argument that BPA should be "afforded less deference" (not necessarily no deference) here than in other cases, the court relied on *Aluminum Co. of America v. Bonneville Power Administration*, 891 F.2d 748, 757 n.12 (9th Cir. 1989), *superseded*, 903 F.2d 585 (9th Cir. 1990), *cert. denied*, _____ U.S. _____, 111 S.Ct. 672 (1991), stating that it had there rejected an argument that BPA was entitled to *no* deference. CEC App. A-13. The question of whether less deference may nonetheless be appropriate was simply not addressed.

The Ninth Circuit's application of a highly deferential standard of review is also contrary to this Court's reasoning that such deference is appropriate when the agency interpretation at issue is contemporaneous with the enactment of the statute being interpreted--not one which is at odds with a prior contemporaneous interpretation of the statute.[7] In *Aluminum Co. of America v. Central Lincoln PUD*, 467 U.S. 380, 390 (1984), for example, this Court noted that "[f]ollowing enactment of the statute, the agency *immediately interpreted* the statute in the manner now under challenge,...'a contemporaneous construction'...." (Emphasis added; citations omitted.) Similarly, in *LADWP*, the court applied a highly deferential standard on the assumption that BPA's policy was a " 'contemporaneous construction of a statute by [those] charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new' " (quoting *Udall v. Tallman*, 380 U.S. 1, 16 (1965)). CEC App. C-14.

LTIAP is not a contemporaneous construction; it is a dramatic departure from BPA's original and long-standing interpretation. The approach taken by BPA at the time it entered into the Exportable Agreement in the 1960s manifested BPA's contemporaneous interpretation of its rights and obligations under legislation authorizing and

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[7]Indeed, it is well settled that where an agency's position has vacillated, deference is inappropriate. *See, e.g., Federal Election Comm'n v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 37 (1981); *National Fuel Gas Supply Corp. v. FERC*, 811 F.2d at 1571; *Tennessee Gas Transmission Co. v. FERC*, 789 F.2d 61, 62 (D.C. Cir. 1986).

implementing the Intertie--not the LTIAP (promulgated in 1988).

While certain aspects of the Near Term Intertie Access Policy at issue in *LADWP* did incorporate provisions of the Exportable Agreement (*see, e.g.*, CEC App. C-6), the same is not true of the LTIAP which differs markedly from the Exportable Agreement. Unlike the LTIAP, for example, the Exportable Agreement did not reserve to BPA Intertie capacity for short-term sales regardless of BPA's actual needs and refuse to make such capacity available to others.

The Exportable Agreement was submitted to Congress by the Department of the Interior. CEC App. A-24. As the court below noted, Congress was aware of BPA's policies under the Exportable Agreement even before the Intertie was constructed. CEC App. A-23 n.12. Specifically, a Department of Interior report "informed Congress" that BPA had assured public and private utilities in the Northwest of "markets proportionate to the respective surpluses of the various utilities," CEC App. A-24, an assurance which, for Puget and other Northwest utilities, has been gutted by BPA's changed policies under the LTIAP.

REASONS FOR GRANTING THE WRIT

This Court should grant certiorari for three reasons. *First*, the Ninth Circuit's application of a highly deferential standard of review to BPA's LTIAP presents a conflict between the circuits. In *National Fuel Gas Supply Corp. v. FERC*, 811 F.2d at 1571, the court described a number of "circumstances in which deference would be inappropriate," and, in particular, explained that "if the agency itself were an interested party...deference might lead a court to endorse self-serving views that an agency might offer...." The Ninth Circuit recognized and quoted the D.C. Circuit's language in this regard, and rejected it stating, "We disagree." CEC App. A-13. *See also* discussion of the general split between the circuits on agency deference in California Energy Commission, *et al.*'s Petition for Writ of Certiorari filed February 4, 1991 (Docket No. 90-1256) at 14-15. Thus, review pursuant to Supreme Court Rule 10.1(a) is appropriate.

Second, the Ninth Circuit's standard of review in this instance also conflicts with this Court's decisions on when agency deference is appropriate. It is clear from this Court's prior decisions that the highly deferential standard applied by the Ninth Circuit in this case is appropriate for agency interpretations which are contemporaneous

constructions of governing statutes. *See, e.g., Aluminum Co. of America v. Central Lincoln PUD*, 467 U.S. at 390 (granting deference where "[f]ollowing enactment of the statute, the agency immediately interpreted the statute in the manner now under challenge,...' a contemporaneous construction'...."); *Udall v. Tallman*, 380 U.S. 1, 16 (1965) ("the administrative practice at stake 'involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion; of making the parts work efficiently and smoothly while they are yet untried and new"). BPA's contemporaneous construction of its governing statutes with respect to Intertie access was set forth in the Exportable Agreement. The LTIAP departs significantly from the Exportable Agreement in the areas challenged here. Because the LTIAP is not a contemporaneous construction of the statute, the high level of deference accorded to BPA by the Ninth Circuit is inconsistent with this Court's prior decisions. Thus review is appropriate under Supreme Court Rule 10.1(c).

Third, review should be granted in this case because the federal questions st stake are both substantial and recurring. These challenges raise important issues in the administration of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. §§ 839-839h. *See, e.g., United States v. An Article of Drug, etc.*, 394 U.S. 784, 791 (1969) ("We granted the Government's petition for certiorari because this interpretation of the Act raised issues of importance in the administration of the Federal Fo d, Drug, and Cosmetic Act"). BPA's actions conflict with the plain language of statutes requiring BPA to allow fair and nondiscriminatory access to Northwest utilities for capacity that is not required to transmit BPA sales. Because of BPA's monopoly control over Intertie allocation, and the importance of interregional electrical transmission now and in future years, questions of the appropriate standard of review and the propriety of BPA's allocation policy raise significant federal questions which sharply impact electrical utilities and their customers in the Northwest. Because the LTIAP is in effect indefinitely, and because no utility can obtain access to BPA's Intertie capacity except under BPA's policy, the economic impact of the LTIAP on Puget and other Northwest utilities is particularly harsh. Review pursuant to Supreme Court Rule 10.1(c) is thus appropriate for these reasons.

CONCLUSION

The Court should grant Puget Sound Power & Light Company's Cross-Petition for a Writ of Certiorari.

Respectfully submitted,

March 6, 1991

SHERILYN PETERSON
PERKINS COIE
One Bellevue Center
Suite 1800
411 - 108th Avenue N.E.
Bellevue, Washington 98004

APPENDIX A

BPA Near Term Intertie Access Policy, 49 Fed. Reg. 44,232, 44,238 (Nov. 5, 1984)

Exhibit B

Utility	Average firm surplus [1]	Average firm surplus [1] August through December [2]
Bonneville Power Administration.....	1,473	2,651
Seattle City Light.....	0	0
Tacoma City Light.....	4	2
Grant County PUD.....	40	72
Douglas County PUD.....	0	0
Chelan County PUD.....	23	41
Pend Oreille PUD.....	0	0
Eugene Water and Electric Board.....	28	50
Cowlitz County PUD.....	3	5
Snohomish County PUD.....	0	0
Montana Power Company.....	3	5
Idaho Power Company.....	0	0
Pacific Power & Light Company.....	361	650
Portland General Electric Company...	135	243
Puget Sound Power & Light.....	0	0
Utah Power & Light Company.....	0	0
Washington Water Power Company..	53	95

[1] Except that in no operating year may a scheduling utility have Assured Delivery for more energy than the amount of Average Firm surplus shown in Column 1 times the number of hours in the operating year, and except that in the remainder of the 1984-85 operating year no scheduling utility may have Assured Delivery for more than the amount of Average Firm Surplus shown in Column 1 times 6936 hours.

[2] Except that in the months of November and December, when the Exportable Agreement is in effect, the Average Firm Surplus shall be the amount shown in Column 1.